



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Department of Motor Vehicles
VAC Chapter Number:	24 VAC 20-70 (including sections 10 through 50)
Regulation Title:	Regulations Governing Requirements for Proof of Residency to Obtain a Virginia Driver's License or Photo Identification Card
Action Title:	Repeal
Date:	July 23, 2002

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The regulatory action will address the processes and requirements by which driver's licenses, commercial driver's licenses, photo-identification cards, learner's permits and/or temporary permits are issued by the Department of Motor Vehicles. (DMV). In recent years the application process for these DMV-issued documents, including the documents that have been accepted as proof of identity and residency, have become the target of significant fraud and abuse. This regulatory action, which seeks to repeal current regulations pertaining to proof of residency, is intended to modify the procedures and requirements associated with the application process for driver's licenses, commercial driver's licenses, photo-identification cards, learner's permits and/or temporary driver's permits. The primary purpose of the repeal is not to eliminate the requirement that an applicant prove residency, but to eliminate the use of certain documents that DMV is

required to accept for proof of residency which are unreliable as proof of Virginia residency or could potentially become the targets of fraud or abuse. This action would provide the agency with the flexibility to modify procedures and requirements in the event that fraud or abuse is detected in the process or unreliable documents are identified.

Finally, with the passage of HB 638 and SB 162 in the 2002 General Assembly, the authority for DMV to accept form DL 51 (certification of residency) was statutorily repealed. This action to repeal the proof of residency regulations would serve to eliminate the resulting inconsistency between statute and regulations.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Pursuant to Va. Code § 46.2-203, the Department of Motor Vehicles (DMV) is authorized to adopt regulations necessary to carry out the laws administered by the Department. Furthermore, pursuant to Va. Code § 46.2-323 and 46.2-345, DMV may adopt regulations to determine the process by which applicants prove that they are residents of the Commonwealth. In each of the foregoing instances, the authority to promulgate regulations is permissive. Because the Commissioner's authority to promulgate regulations in these matters is permissive, the Commissioner also has, by implication, the authority to modify, amend, or repeal any regulations promulgated under such authority.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The regulatory action will address the process and requirements by which driver's licenses, commercial driver's licenses, photo-identification cards, learner's permits and/or temporary driver's permits (DMV credentials/documents) are issued by the Department of Motor Vehicles (DMV). The regulations that are the subject of this action were implemented in 1994 in response to legislation which created a new residency requirement for obtaining a Virginia DMV credential/document and which permitted, but did not require, the agency to promulgate regulations pertaining to proof of residency. This action is necessary to address a threat to

public safety and is essential to protect the safety and welfare of citizens of the Commonwealth and to protect and enhance national security.

This proposed action includes repeal of regulation number 24VAC20-70-30, which will eliminate the requirement that DMV accept the Residency Certification Form (DL 51) when an applicant for a driver license or identification card does not provide an acceptable document for proof of residency (Section D). It will also eliminate the list of acceptable documents (Section C). The repeal will allow the agency the administrative discretion to determine what documents are acceptable and will enable the agency to develop the most effective process for the prevention of fraud.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

DMV is proposing this regulatory action, which consists of repeal of existing regulations in order to address certain processes and requirements by which driver's licenses, commercial driver's licenses, photo-identification cards, learner's permits and/or temporary permits are issued by DMV. Specifically this regulatory action will repeal 24 VAC 20-70, including the regulations contained in sections 10 through 50 pertaining to proof of residency requirements for these DMV-issued documents.

This proposed repeal is necessary to address a threat to public safety and is essential to protect the safety and welfare of citizens of the Commonwealth and to protect and enhance national security.

In recent years the process for obtaining a driver's license and photo-identification card has been subjected to widespread abuse and fraud, primarily by an industry consisting of criminal organizations and facilitators who assist non-Virginia residents, many of them immigrants, in obtaining Virginia driver's licenses and/or identification cards by fraudulent means. In the recent past, these organizations and facilitators victimized immigrants by charging them large sums for assistance in obtaining driver's licenses and identification cards and by encouraging the immigrants to, in the application process, submit falsified Residency Certifications (DL-51s) which were executed by facilitators or their agents who attested to the false information contained therein. The magnitude of this abuse is evidenced by the trial and conviction of a facilitator in U.S. District Court. This facilitator had established a lucrative business, in which thousands of victims were brought to Virginia from New Jersey, New York and Maryland on a routine basis in order to obtain a Virginia driver's license or identification card by fraudulent means. The primary defense put forth by the defendant in the case was the assertion that DMV promoted or encouraged this activity by virtue of the fact that the agency had created and permitted the use of these forms in the application process for photo-identification cards and driver's licenses. Federal prosecutors in the case strongly encouraged elimination of the forms.

The DL-51 was eliminated by emergency regulatory action and eventually by legislation (HB 638 and SB 162), and hence, photo-identification cards and driver's licenses issued after September 21, 2002 were less likely to be the product of fraudulent DL-51s. However, a significant percentage of the photo-identification cards and driver's licenses in circulation today, which, according to regulations are acceptable as proof of residency, may have been issued based on potentially fraudulent documentation. In addition, as a result of a recent review by DMV of other documentation accepted in the application process as proof of residency, it has become apparent that several of these documents are likewise subject to abuse and fraud and may be targeted by criminal organizations and facilitators in lieu of the discontinued DL-51s. Accordingly, the permanent repeal of 24VAC20-70, including sections 10 through 50, is necessary to ensure that driver's licenses, commercial driver's licenses, photo-identification cards, learner's permits and temporary driver's permits are henceforth issued under the strictest and most reliable standards possible.

This action is essential to protect public safety and welfare and enhance state and national security. The abuse and misuse of the application process by criminal organizations, facilitators and those who seek to carry out attacks against the United States and its citizens results in the issuance of driver's licenses and identification cards based upon false identity and/or address information and poses a threat to public health, safety and security by hindering the ability of DMV and law enforcement to accurately identify and locate individuals. These documents tend to be breeder documents and are used by the bearer to accumulate additional identification documents to further substantiate the individual's potentially fraudulent identity, residency and/or location. Furthermore, as long as documents which are subject to abuse are utilized in the driver's license and identification card application process, criminal organizations, facilitators and their agents will likely continue to utilize the process to victimize immigrants seeking such documentation. Hence, it is critical for DMV to have the authority to impose stringent and new requirements upon the application process and/or the documents used to prove residency. In particular, it is necessary for the agency to maintain the flexibility to discontinue use of a particular document should it become subject to widespread fraud and abuse, or should a determination be made that a document is no longer reliable as proof of Virginia residency.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary disadvantage/inconvenience of this regulatory action is to members of the public who seek Virginia driver's licenses, commercial driver's licenses, photo identification cards, learner's permits or temporary driver's permits. As a result of the statutory "repeal" of the Residency Certification (DL-51), applicants are required to provide documentary proof of Virginia residency. Further tightening of the proof of residency requirements by the repeal of

regulations and rescission of the use of documents which are unreliable as proof of residency or subject to fraud and abuse may render it more difficult for applicants to prove residency.

The primary advantage of this regulatory action is directed at members of the general public. Tightening the requirements for obtaining Virginia DMV credentials/documents by increasing the standard for proving Virginia residency will serve to ensure that only those individuals who are lawfully entitled receive these credentials/documents. The agency will no longer be required to accept as proof of Virginia residency classes of documents which are unreliable as proof of residency or subject to fraud and abuse. Increasing the standards for issuing DMV credentials/documents will also help to ensure that those who would inflict harm upon the citizens of Virginia and the United States do not target the Commonwealth in order to obtain DMV-issued credentials/documents, which often serve as breeder documents and enable those individuals who obtain them to obtain various identity documents from other states. Enhancing the standards for issuing Virginia DMV credentials/documents by requiring applicants to prove that they are residents of Virginia by means of reliable documentation will help to ensure that applicants who do not live in this Commonwealth are not able to obtain a Virginia DMV credential/document as a means of obtaining other states' credentials.

The advantage to DMV of repealing the residency regulations would be to afford the agency the flexibility to expeditiously act in situations where classes of documents are targeted for fraud or abuse or otherwise are known to be unreliable as proof of Virginia residency. Repeal of the residency regulations may present a disadvantage to the agency, as elimination of proof of residency documents which required no proof of Virginia residency for issuance, could generate complaints from applicants because of the inconvenience and added complexity associated with proving residency. In response, the agency is evaluating, and will continue to evaluate, other documents that may be accepted as proof of residency, as well as methods of verifying residency, in order to ameliorate the impact on applicants and the agency.

Although emergency statutory repeal of the Residency Certification impacted other state entities, particularly the Department of Education which issues documentation currently acceptable as proof of Virginia residency, it is not anticipated that repeal of the remainder of the residency regulations will have the same level of impact on such state agencies.

DMV plans to hold public hearings to provide the public with opportunity to present their comments regarding these and other issues that may be presented by this regulatory action.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

There is no reliable method to calculate the fiscal impact(s) associated with this regulatory action. It is estimated that the number of individuals who annually apply for a DMV credential/document under circumstances which would require proof of Virginia residency is 668,047. Rescission of the Residency Certification by emergency regulation and ultimately by statute was expected to have the most significant impact upon applicants for DMV credentials/documents, particularly those who had no readily available documentary proof that they resided in Virginia. Repeal of the remainder of the residency regulations, and potentially certain classes of proof of residency documents set forth in the regulations, may have an impact on applicants, the number of which cannot be estimated. Since the number of applicants who would be impacted cannot be estimated and because the “costs” associated with obtaining alternative documentary proof of residency are not necessarily measurable, it would be impossible to estimate the projected cost of the regulation for affected individuals, businesses, the Commonwealth or other entities.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

This regulatory action proposes to repeal 24VAC 20-70, including the regulations contained in sections 10 through 50 pertaining to proof of residency requirements for these DMV-issued documents.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

One alternative to this proposal which has been considered is implementation of the provisions contained herein by administrative action by the agency. However, the regulatory action appears to be necessary in order to repeal regulations which are currently in existence in order to permit modification of the requirements that may be imposed upon the issuance of various documents by DMV. Repeal of the regulations pertaining to proof of residency in the application process for Virginia driver's licenses, commercial driver's licenses, photo-identification cards, learner's permits and temporary permits is necessary to provide DMV with the authority to modify its application process as the need arises, in order to ensure that photo-identification cards and driver's licenses, the primary means of identification for so many important and fundamental functions and services, are issued using a reliable process and valid documentation.

Prosecution of those who commit fraud and abuse in the application process, while important as a deterrent, will not totally resolve the issues associated with various DMV-issued documents, including driver's licenses and photo-identification cards, obtained using potentially fraudulent

residency documents and/or an unreliable process. Measures must be implemented immediately to ensure that unreliable driver's licenses and photo-identification cards are not issued under previous standards and requirements. Further, as criminal organizations develop new means of producing fraudulent documents or abusing the application process, the agency must, in addition to the alternative of prosecution, be afforded the flexibility to modify the documents and procedures that are utilized in the application process to ensure that such fraud and abuse may be addressed immediately. The agency must have the ability to implement measures that will prevent the issuance of unreliable driver's licenses and photo-identification cards under standards and requirements found to be problematic.

DMV has also considered a proposed alternative that would provide minimal regulations which would remove reference to any specific documents. The regulations would state simply that documents are required to establish residency, but not specify the documents the agency would accept. Lists of acceptable documents would still be available to the public. The proposed minimal regulations would state that whenever documents were added or deleted from the list of acceptable documents, DMV would publish the fact for some specified period prior to implementation. DMV has concerns that such an approach would encourage criminal organizations and others who would abuse the documents targeted for removal to flood DMV offices with applications using those unreliable residency documents before they are officially removed from the residency documents list. For this reason, DMV is not recommending this approach.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

The Notice of Intended Regulatory Action (NOIRA) was published on December 17, 2001. No public comments directed at this regulatory action were received during the NOIRA comment period. The agency has received complaints from various entities pertaining to the difficulties faced by particular groups, immigrant and non-immigrant aliens and minors, in particular, and by specific individuals, who have experienced difficulty in obtaining documentation to prove residency in Virginia since elimination of the Residency Certification (DL-51). The agency has attempted to accommodate the needs of groups and individuals who may have difficulty in proving residency without use of the Residency Certification by expanding the list of documents that may be used to prove Virginia residency. The agency continues to examine possible documents or processes that may prove to be acceptable means of proving Virginia residency.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Because this regulatory action serves to repeal an already existing regulation—this action and its impact are easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

Evaluation of the effectiveness and impact of this regulatory action is expected to be on-going. The agency conducts weekly meetings to deal with issues related to issuance of DMV credentials/documents for an indefinite period and will address proof of residency issues as they are brought to the attention of the agency by the public, legislators, or state and federal governmental entities.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The potential impact upon families will be to alter the process and tighten the standards by which applicants (family members) are able to obtain driver's licenses and identification cards. Driver's licenses and photo identification cards are often used to identify the individual for purposes of various critical life-functions, including but not limited to, employment, obtaining government-provided benefits, law enforcement, and cashing checks, and while the proposed regulatory action will heighten the requirements associated with obtaining these documents, the result will be documents that are more reliable as forms of identification. Although the standards by which the documents affected by this regulatory action are issued will be heightened, DMV will be afforded sufficient discretion to address the needs of eligible applicants (and potentially their families) in special circumstances. The action is expected to have no impact upon families in the four factors provided above.